



# Hate Crimes against the LGBT Community in the Commonwealth: A Situational Analysis



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The Human Dignity Trust works with lesbian, gay, bisexual and transgender (LGBT) activists around the world to defend human rights in countries where private consensual sexual activity between adults of the same sex is criminalised. In collaboration with local partners and lawyers, we support strategic litigation to challenge laws that persecute people on the basis of their sexual orientation and/or gender identity.

We also provide technical legal assistance on request to governments seeking to reform outdated sexual offences laws and enact protective legislation, to bring domestic laws into compliance with international human rights standards.

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Contact:  
+44 (0)20 7419 3770  
[administrator@humandignitytrust.org](mailto:administrator@humandignitytrust.org)

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## About the Equality & Justice Alliance

The Equality & Justice Alliance is a consortium of international organisations with expertise in advancing equality, addressing the structural causes of discrimination and violence, and increasing protection to enable strong and fair societies for all Commonwealth citizens, regardless of gender, sex, sexual orientation, or gender identity and expression.

The Alliance was formed following the Commonwealth Heads of Government Meeting in London in April 2018, during which then UK Prime Minister Theresa May announced that, as Chair-in-Office of the Commonwealth, the UK would support Commonwealth governments that want to reform their laws that discriminate against women and girls, and lesbian, gay, bisexual and transgender people, many of which are a colonial legacy. The Equality & Justice Alliance was formed to provide this support during the two-year period 2018-2020, with funding from the UK Foreign and Commonwealth Office, in support of the commitments made during CHOGM 2018.



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# Note on Authors

**Eric Mawira Gitari** is a Doctor of Juridical Science candidate at Harvard Law School where he is researching and writing on international law and human rights, comparative constitutional law and transnational social networks. Eric received his LLB from the University of Nairobi in 2007, and an LLM degree from Harvard University in 2018 (degree waived upon admission into the SJD program).

Prior to joining Harvard in 2017, Eric worked as co-founder and Executive Director of the National Gay and Lesbian Human Rights Commission in Kenya where he led litigation efforts and legal aid, civic education and paralegal trainings for LGBT people in Kenya. He was part of the pan-Africa activists collective that engaged in background research and advocacy towards the adoption of *Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or gender identity* by the African Commission on Human and Peoples' Rights in 2014. He was also a member of the International Bar Association LGBT Committee (2013-2016). In 2011-2012, he worked with the Hebrew Immigrant Aid Society managing the protection and resettlement of LGBT refugees in Kenya and Uganda to safer third countries. In 2010, Eric worked with the Kenya Human Rights Commission (KHRC) as an associate in charge of the LGBT programme where he co-authored a ground-breaking research report on human rights conditions of LGBT people in Kenya, *The Outlawed Amongst Us*. Prior to joining KHRC, Eric worked with the Centre for Rights Education and Awareness as a legal assistant with survivors of Sexual and Gender Based violence in Nairobi's Kibera slums.

At Harvard, Eric has worked as an LLM Advisor with the Harvard Law School Graduate Programme and as a researcher with the Harvard Law School Human Rights Programme, where he has been working with the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. In 2019, Eric worked with the West Africa regional office of the UN High Commissioner for Human Rights to monitor, promote and protect the human rights of LGBT people in The Gambia and Senegal as a Chayes International Public Service Fellow of Harvard Law School.

**Mark Walters** is a Professor of Criminal Law and Criminology at the University of Sussex Law School. Mark has conducted extensive research on hate crime and its impacts, and on criminal justice reform, with a special emphasis on criminal law theory and restorative justice practice and theory. He has published 50 books, journal articles and research reports on these topics.

Mark advises on hate crime to the UK Home Office, Law Commission, Metropolitan Police Service, and the London Mayor's Office for Policing and Crime, as well as numerous NGOs and civil society organisations. He has also presented research evidence in the House of Commons (UK), the European Parliament (Brussels), and the Oireachtas (Dublin). Most recently he has delivered lectures and training for the United Nations' Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders in Tokyo.

Mark completed his doctorate in law (criminology) specialising in hate crime at the Centre for Criminology, University of Oxford (2012). He has also completed an MSc in Criminology and Criminal Justice (Research Methods) at the Centre for Criminology, University of Oxford (2008), and an LLM specialising in criminal justice at the University of New South Wales, Sydney, Australia (2006). Mark's first degree (LLB) was completed at the University of Sussex (2002).

# Glossary

**Cisgender** describes people with a gender identity that matches the gender that is culturally affiliated with the sex assigned to them at birth. It is a term often used to describe people who are not transgender or gender diverse.

**Gender Expression** refers to external manifestations of gender, expressed through one's name, pronouns, clothing, haircut, behaviour, voice, or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine and feminine changes over time and varies by culture. Typically, people seek to make their gender expression align with their gender identity, regardless of the sex they were assigned at birth.

**Gender Identity** refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.<sup>1</sup>

**LGBT** is an acronym for Lesbian, Gay, Bisexual and Transgender.

**LGBTI** is an acronym for Lesbian, Gay, Bisexual, Transgender, and Intersex.

**LGBTQI** is an acronym for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex.

**Sex** describes the classification of people as male, female or intersex based on a combination of bodily characteristics, including: chromosomes, hormones, internal and external reproductive organs, and secondary sex characteristics. At birth, infants are assigned a sex, usually based only on the appearance of their external reproductive organs.

**Sex Assigned at Birth** refers to the sex individuals are allocated when they are born on the basis of the appearance of their external genitalia. A person's assigned sex may not conform with their gender identity, which develops over time.



**Sexual Orientation** describes an individual's capacity for physical, romantic and/or emotional attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. Gender identity and sexual orientation are not the same. Transgender and gender diverse people's sexual orientation is as diverse as that of cisgender people, and they may identify as heterosexual, bisexual, gay or lesbian.

**Transgender** is an umbrella term for people whose gender identity differs from the gender that is culturally affiliated with the sex assigned to them at birth. This includes people who present themselves or identify differently from the cultural gender expectations of the sex assigned to them at birth, including all of those who intend to undergo, are undergoing, or have undergone gender affirming treatments, as well as those who will not undergo medical treatments. A person's gender identity is independent from their sexual orientation. Just as a cisgender person can be lesbian, gay, bisexual or heterosexual, so can a transgender or gender diverse person. 'Trans' is often used as a shorthand for transgender.

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<sup>1</sup> The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity (2007). Available at [http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf)

# Introduction

Every year, millions of people across the Commonwealth suffer physical, sexual and psychological abuse and violence on account of their real or perceived sexual orientation, gender identity or expression (HRC, 2018: 19). Some common examples include murders, mutilation and torture, physical and sexual assaults, threats of violence, arson, and malicious destruction of property. Criminal offences that are motivated by, or which demonstrate, hate or prejudice towards the victim based on the victim's perceived sexual orientation, gender identity or expression are called 'hate crimes'. They are frequently perpetrated by state and non-state actors, and have been characterised as both a local and global phenomenon that occurs at home, in educational institutions, in public, online, as well as in national and even international contexts (HRC, 2018).<sup>2</sup>

Studies have consistently demonstrated that, compared to the general population, LGBT people are more likely to suffer violence in their lifetime due to their non-conformity with established gender and sexuality norms (Blondeel et al., 2017). Many LGBT people continue to report that they live with a heightened risk of imminent physical and sexual violence, which harms their mental and physical health and society as a whole (Blondeel et al., 2017). In recent years, data have emerged that reveal a concerning pattern of hate crime perpetrated against LGBT people across the Commonwealth that is largely unreported, and which is often committed by state and non-state actors with impunity. This report highlights the need for a coordinated response to tackle the problem and its root causes.<sup>3</sup> At the supranational level, the UN Human Rights Council has passed a resolution expressing grave concern about violence and discrimination based on sexual orientation and gender identity.<sup>4</sup> A similar resolution was adopted by the African Commission on Human and Peoples' Rights (ACHPR) in 2014, urging African states, including Commonwealth members, to end all acts of violence based on real or perceived sexual orientation and gender identity, and to properly investigate and prosecute perpetrators.<sup>5</sup> In 2016, the UN designated an Independent Expert on Sexual Orientation and Gender Identity ('the Independent Expert') with the mandate of assessing the implementation by states of existing international human rights instruments so as to overcome violence and discrimination against LGBT people, among other duties.<sup>6</sup> Some Commonwealth countries have also sought to tackle this growing human rights issue by enacting specific hate crime legislation.<sup>7</sup> Hate crime legislation, when backed by policy guidance and training, can make a dramatic difference to how criminal justice systems tackle hate crimes against LGBT people (Schweppe et al., 2018). It is most effective when combined with broader equality for LGBT people across all forms of law, including by decriminalising consensual same-sex sexual acts and enacting anti-discrimination laws,

but can nonetheless provide enhanced protections even where this is not the case (HDT, 2019a). Importantly, hate crime legislation is now a key part of many states' toolkit in challenging violent prejudice in society.

This report outlines the nature and extent of anti-LGBT hate crime and its impact on individuals and societies in the Commonwealth.

**Section 1** outlines the methodology and approach of this report, and sets out the legal and social context in which hate crimes are committed against LGBT people.

**Section 2** assesses the extent and nature of anti-LGBT hate crimes, exploring trends across the Commonwealth and surveying regional and country-specific case examples. Information on the perpetrators of anti-LGBT victimisation is also outlined.

**Section 3** examines the impacts that anti-LGBT hate crimes have on individuals, communities and society. Commonalities and differences in experiences across different sectors of LGBT communities are described.

**Section 4** of the report concludes with recommendations on how Commonwealth states should legislate against anti-LGBT hate crime, and why statutory agencies must implement monitoring tools to ensure that anti-LGBT victimisation becomes visible and is measured.

This report should be read in conjunction with a complementary publication by the Human Dignity Trust, *Legislating to Address Hate Crimes against the LGBT Community in the Commonwealth* (HDT, 2019a), written by Kay Goodall and Mark Walters, which outlines the justifications for enacting hate crime legislation, and provides recommendations for the types of law that have been evidenced as most effective.

2 As emphasised by Interviewee 03.

3 As emphasised by a number of our interviews and as outlined in our associated report, Human Dignity Trust, *Legislating to Address Hate Crimes against the LGBT Community in the Commonwealth* (2019). Available at <https://www.humandignitytrust.org/wp-content/uploads/resources/Legislating-to-Address-Hate-Crimes-against-the-LGBT-Community-in-the-Commonwealth-Final.pdf> (last accessed 10 March 2020).

4 United Nations Human Rights Council (2011) *Human rights, sexual orientation and gender identity*. HRC/RES/17/19. Geneva. Note that all members of the Commonwealth are members of the United Nations.

5 Africa Commission on Human and Peoples Rights (2014). 275: *Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*. Available at <https://www.achpr.org/sessions/resolutions?id=322> (last accessed February 2020).

6 United Nations Human Rights Council; 2016. *Protection against violence and discrimination based on sexual orientation and gender identity*. A/HRC/32/L.2/Rev.1. Geneva.

7 A detailed analysis of the Commonwealth countries that have enacted some form of hate crimes legislation is available in Human Dignity Trust, *Legislating to Address Hate Crimes against the LGBT Community in the Commonwealth* (2019). Available at <https://www.humandignitytrust.org/wp-content/uploads/resources/Legislating-to-Address-Hate-Crimes-against-the-LGBT-Community-in-the-Commonwealth-Final.pdf> (last accessed 10 March 2020).

# **Section 1:**

## **Scope of the Report**

## Methodology

This report is based on desk-based research as well as outreach and six in-depth interviews with leading experts and advisors who represent international non-governmental organisations (NGOs) working in the field of civil liberties and LGBT rights. Handwritten notes were taken of all interviews, which were then coded 01 to 06 and thematically analysed. Secondary analysis of hate crime statistics published by government agencies was an important source of information; though these statistical data are only periodically published by a few states. Where possible, data were disaggregated to analyse the nature of hate crime against gay men, lesbian women, and bisexual and trans people. The research also relied on publications by international and national NGOs, as well as media archives. Both academic peer-reviewed and grey literature on the nature and prevalence of hate crimes towards LGBT people were examined. The research data relied upon in this report span a period of 11 years, from 2009 to 2020. All consulted sources are listed in the bibliography.

## Terminology

The definition and conceptualisation of sexual orientation, gender identity and gender expression are an ongoing and fluid process. Common terminology is influenced by contemporary politics and social norms, but it is also grounded in historical and religious teachings, and, to a limited extent, in medical science. This report uses the acronym LGBT, which includes lesbian, gay, bisexual and transgender. LGBT is the most widely used acronym across the international literature, as well as within domestic and international institutions. We are mindful that not all sexual orientations and gender identities necessarily fall within the LGBT acronym, and that the language used in this publication has been developed from a mostly Western perspective. In some parts of this report we refer to LGBTI and LGBTIQ (which includes queer and intersex) where we are referencing the work of organisations/researchers that have specifically used these acronyms. We also occasionally use LGB when discussing sexual orientation-based prejudice not affecting transgender people. It is our intention that the information found in this report be inclusive of as many different sexual and gender identities as the data analysis allows. We acknowledge that there is still much work to be done to increase inclusivity across sexual and gender minority groups in order to fully understand the diverse experiences of people from different societies across the Commonwealth.

## Context

The geographic scope of this research is restricted to the Commonwealth, which is a voluntary political association of 54 sovereign states. Most of the Commonwealth countries, with the exception of Rwanda and Mozambique, were former territories of the British Empire.<sup>8</sup>

The data reviewed represent Commonwealth jurisdictions from Asia, Africa, the Americas, Europe and the Pacific, with an estimated total population of 2.4 billion people.<sup>9</sup> Although member countries have no legal obligations under the Commonwealth Charter, they are united by shared values of the rule of law, human rights and democracy, and a commitment to developing free and democratic societies and promoting peace and prosperity for all Commonwealth citizens (The Commonwealth, 2013). In addition to sharing values, principles and interests, the prevailing legal system in Commonwealth countries is the common law, and the political structure is largely based on the Westminster parliamentary model of government.

While hate crime against LGBT people is not a problem that is unique to the Commonwealth, the shared legal history of many Commonwealth countries offers a framework to analyse its prevalence, nature and impacts. In particular, the widespread criminalisation of private consensual same-sex sexual intimacy and expression between adults in Commonwealth countries forms much of the backdrop for this analysis. These penal provisions were largely introduced by colonial administrators, and, upon achieving independence, many Commonwealth countries retained their colonial-era penal codes and laws (see, for example, HRW, 2008; HDT, 2019b). As of March 2020, 35 of the 54 member states of the Commonwealth continue to criminalise private sexual acts between consenting adults of the same sex, and certain forms of sexual and gender expression.<sup>10</sup> Furthermore, 17 Commonwealth states specifically criminalise same-sex sexual conduct between females.<sup>11</sup> Maximum punishments can be severe, though the implementation of these laws varies between member states. In Bangladesh, Barbados, The Gambia, Guyana, Sierra Leone, Tanzania, Uganda and Zambia, consensual same-sex sexual conduct is penalised with up to a maximum sentence of life imprisonment (HDT, n.d.), while the death penalty is legally prescribed in Brunei and the northern states of Nigeria. Any form of sexual intercourse (including same-sex) outside marriage is punishable by death in Pakistan.<sup>12</sup>

Transgender and gender diverse people are also directly and indirectly criminalised in many Commonwealth countries. In addition to often being subject to the laws that prohibit private consensual same-sex sexual intimacy, transgender and gender diverse people are also criminalised by laws that regulate their gender expression (through so-called 'cross-dressing' or 'impersonation' laws) and the misuse of public order, vagrancy and misdemeanour offences (HDT, 2019b). These laws are broad and are often used in conjunction with one another, not only to arrest and detain trans and gender diverse people, but to limit their access to rights and justice, and to otherwise control and punish them (HDT, 2019b).

These laws are both a product of, and a contributory factor to, widespread prejudice, discrimination, stigma and violence against LGBT people. Laws that criminalise LGBT people put them beyond the protection of the law, fostering a climate of state-sanctioned fear, discrimination, violence and abuse. Wherever there is criminalisation, LGBT people face police and state harassment, blackmail and extortion, and exclusion from vital services, such as health, education, housing and employment. Criminalisation therefore creates obstacles to governments fulfilling their responsibilities to their citizenry, including securing public health and achieving economic development (HDT, 2015). Because of this, LGBT people are dissuaded from openly revealing their sexual orientation, gender identities and/or presenting their gender expression. This further serves to create barriers to accessing basic civil rights such as education, employment, housing and health. Indeed, there is a well-evidenced correlation between criminalisation and the failure of democracy and the rule of law, and restrictions on broader human rights (HDT, 2015).

The Commonwealth's legal history of imposing moral values and gender inequality is seen as one of the factors that has created the climate that persists today. Post-colonial theorists have demonstrated that the colonial project of criminalising sexual and gender variance sought to standardise and erase divergent sexualities, gender identities, spiritualities and cultures in line with Victorian moral values for reasons of political expediency (Tamale, 2014). The result was that such criminalisation reinforced, and sometimes introduced, gender and sexual hierarchies in colonised societies, and institutionalised bias and stigma towards LGBT communities.

Old and new laws that criminalise same-sex intimacy and gender nonconformity do more than outlaw certain sexual acts or gender expressions – they effectively prevent LGBT people from expressing their identity. Such laws help to foster a social climate that promotes rigid gender norms and gender inequalities (Jewkes et al., 2015). Those who fall outside of these expected norms and 'ways of being' are not only resisted by the law, they are also likely to be subjected to acts of targeted interpersonal violence. A legal culture that excludes LGBT people from the protections of the law also creates a culture of impunity where violence towards LGBT people goes unchallenged. In this context, bias- and hate-motivated violence and abuse are tools used by both state and non-state actors to control and punish the transgression of established sexual and gender norms (Perry, 2001).

Three of our expert interviewees emphasised that there was a direct correlation between recent increases in anti-LGBT hate crimes and the rise of ultraconservative political and religious leaders who persecute, dehumanise and denounce LGBT people (Interviewees 01, 02 and 03; see also HRC, 2018: para 38).<sup>13</sup> A stark example of such persecution was evident in The Gambia under the Presidency of Yahya Jammeh. In 2008, the former President gave LGBT people a 24-hour ultimatum to leave the country, or he would cut off their heads (BBC, 2008). In 2014, he called LGBT people "vermin" and said he would deal with them in the same way he deals with mosquitoes which carry malaria (HRW, 2015). Rhetoric used against LGBT people is often intertwined with religious dogma and interpretations of the Bible, sharia, and other religious texts. In some cases, political leaders even deny the existence of LGBT people and anti-LGBT hate crimes in their countries altogether (HRC, 2018: para 62). This form of denial and negation works to encourage perpetrators to continue engaging in hate crimes without legal consequence.

The media have also played a significant role in disseminating and amplifying derogatory and prejudicial messages about LGBT people (Civil Society Coalition et al., 2014; Tomlinson, 2017). This is often connected with online hate speech and the spreading of fake news and propaganda particularly targeted towards minorities. Even in countries where there is a pro-LGBT human rights legislative framework, there have been increases in negative rhetoric towards LGBT people and other minority groups. In the UK, data from the Crime Survey for England and Wales (CSEW) showed that there had been an increase in anti-LGBT hate crimes of 11 per cent between 2016 – the year the public voted to leave the European Union – and 2018 (Walters, 2019). Data from the British Social Attitudes (BSA) survey also showed that the proportion of people who say they are completely comfortable with same-sex sexual relations fell for the first time in more than three decades, dropping from 68 per cent in 2017 to 66 per cent in 2018 (Walters, 2019). These increases in anti-LGBT hostilities have come at a time of widespread coverage of anti-LGBT protests outside schools that teach LGBT equality, and where politicians have outwardly supported protestors.

As will be demonstrated in this report, the widespread problem of hate crimes against LGBT people, and the failure of many Commonwealth countries to address it, raises concerns about states' compliance with international law. All members of the Commonwealth are UN members and have ratified international human rights instruments. Jurisprudence from international human rights bodies has clarified that human rights are universal and apply equally to all.<sup>14</sup> States bear the primary obligation and responsibility to respect and protect the human rights of all people under their jurisdiction equally. In this regard, we reiterate that this report should be read in conjunction with our linked report *Legislating to Address Hate Crimes against the LGBT Community in the Commonwealth* (HDT, 2019a).

## Limitations

Very few Commonwealth member states record and publish hate crime statistics. With the exception of the UK, the Isle of Man, Canada and, to a lesser extent, South Africa, state-level data on hate crime are almost entirely lacking within Commonwealth jurisdictions.<sup>15</sup> In other words, there is a major gap in data collection, which has inevitably placed constraints on the coverage of this report. The lack of data is due in part to a reluctance of victims to report anti-LGBT hate crime to the police for a variety of reasons, including criminalisation and the culture of discrimination and stigma against LGBT communities,<sup>16</sup> but is also a result of institutional failings to record hate offences in criminal justice systems. For the most part, however, the absence of state-level data on hate crime results from there being a lack of specific or general hate crime legislation (HDT, 2019a).

This report does not claim to account for anti-LGBT hate crime in every Commonwealth jurisdiction, but offers insights from those working in Commonwealth countries to support victims of hate crime, combined with a thematic review of available data to evidence and detail the extent, nature and impacts of anti-LGBT hate crime.



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- 8 The current member states of the Commonwealth are: Antigua and Barbuda, Australia, The Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, Cameroon, Canada, Cyprus, Dominica, Fiji, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kingdom of eSwatini, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Rwanda, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom, United Republic of Tanzania, Vanuatu, Zambia and Zimbabwe. It is worth noting that some member states have multiple jurisdictions. Further information available at The Commonwealth, <http://thecommonwealth.org/member-countries> (last accessed 18 February 2020).
- 9 The Commonwealth, <http://thecommonwealth.org/about-us> (last accessed February 2020).
- 10 These are: Antigua and Barbuda, Bangladesh, Barbados, Brunei, Cameroon, Dominica, eSwatini, The Gambia, Ghana, Grenada, Guyana, Jamaica, Kenya, Kiribati, Malawi, Malaysia, Maldives, Mauritius, Namibia, Nigeria, Pakistan, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Tanzania, Tonga, Tuvalu, Uganda and Zambia. Additionally, the Cook Islands, a self-governing associate of New Zealand, continues to criminalise same-sex sexual conduct. Further information available at Human Dignity Trust, <https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/> (last accessed 10 March 2020).
- 11 These are: Antigua and Barbuda, Barbados, Brunei, Cameroon, Dominica, The Gambia, Malawi, Malaysia, Maldives, Nigeria, Saint Lucia, Saint Vincent and the Grenadines, Solomon Islands, Sri Lanka, Tanzania, Uganda and Zambia. Further information available at Human Dignity Trust, <https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/> (last accessed 10 March 2020).
- 12 *Hudood Ordinance* 1979, S. 4 Zina.
- 13 Researchers have also shown a direct correlation between prejudiced remarks made by political leaders about certain groups and spikes in hate crimes (see, for example, Müller & Schwarz, 2018).
- 14 Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994). Available at <http://hrlibrary.umn.edu/undocs/html/vws488.htm> (last accessed February 2020).
- 15 A more detailed analysis of the collection of data on SOGIE-based hate crimes at the state level and the impact of enacting hate crimes legislation on the measuring and monitoring of hate crimes is provided in Human Dignity Trust (2019a). Available at <https://www.humandignitytrust.org/wp-content/uploads/resources/Legislatting-to-Address-Hate-Crimes-against-the-LGBT-Community-in-the-Commonwealth-Final.pdf> (last accessed 10 March 2020).
- 16 See Section 2, 'An upward trend'.

# **Section 2: The Extent and Nature of Anti-LGBT Hate Crimes in Commonwealth Countries**

## A global trend

The proliferation of anti-LGBT violence globally has been brought to the fore over the past 10 to 20 years. While many thousands (if not millions) of hate crimes continue to remain hidden, both from state authorities and the wider public, technological advancements in the ways in which abuses can be uncovered and shared globally mean that the problem of anti-LGBT hate crimes is gaining greater international awareness. There is now a well-developed body of research undertaken in the USA and Europe on the pervasiveness of anti-LGBT hate crime (Chakraborti & Garland 2015: Chs 4 & 5). Within the Commonwealth, most research has been conducted in the UK and Canada (and to a lesser extent Australia and New Zealand), but there is some qualitative research conducted by academics and NGO groups, such as Human Rights Watch (HRW), in the Global South that has highlighted the extent to which LGBT communities are being affected by targeted violence.

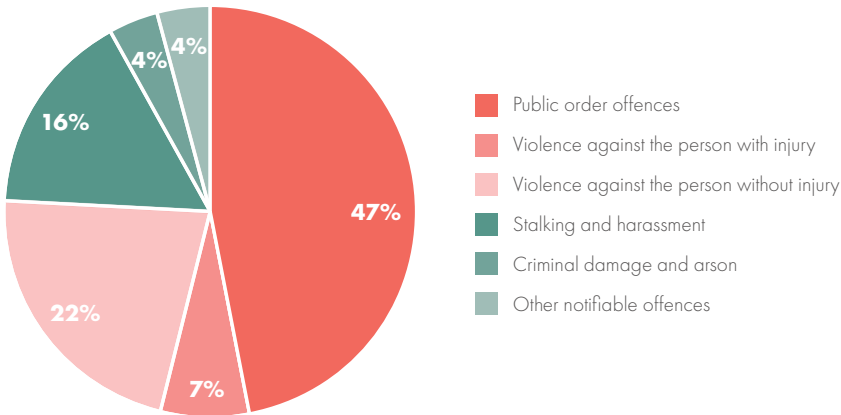
This section highlights the prevalence and nature of hate crimes commonly committed against LGBT people. The section is subdivided by region, but is intended to highlight themes across jurisdictions that illustrate both the prevalence and nature of anti-LGBT hate crime. Both quantitative and qualitative data collected on countries throughout the Commonwealth are reviewed.

### *Anti-LGBT hate crime in Europe: Focus on the United Kingdom*

#### **The extent of anti-LGBT abuse**

The only Commonwealth jurisdiction in Europe with data available on recorded anti-LGBT hate crime is the United Kingdom. This jurisdiction has by far the most extensive monitoring mechanisms for hate crime, measuring more offences than all other countries that officially record incidents.<sup>17</sup> Police records from England and Wales showed that in 2018/19, there were 14,491 hate crimes based on sexual orientation (a 25 per cent increase from the previous year) and 2,333 hate crimes based on “transgender identity” (a 37 per cent increase from the previous year) (Home Office, 2019). Most anti-LGBT hate crime involves public order offences (such as threatening and abusive behaviour in public spaces that is likely to cause harassment, alarm and distress). The second largest type of recorded offence is violence against the person (e.g. assaults).

**FIGURE 1:** Types of anti-LGBT hate crime recorded by the police in England and Wales

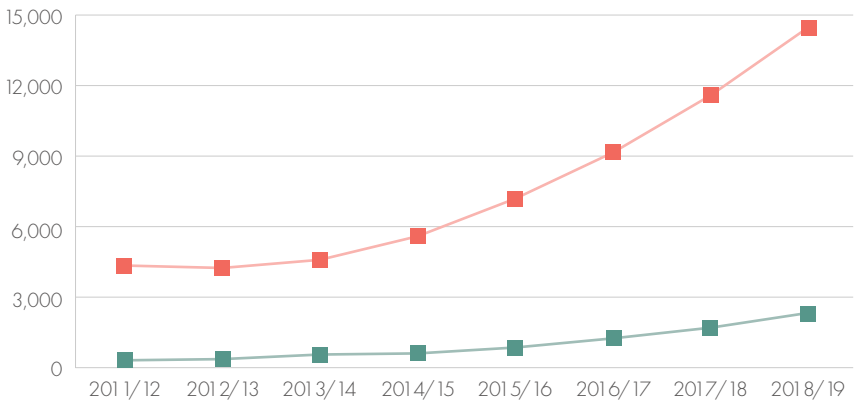


Source: Home Office (2019)

**An upward trend**

Longer term trends reveal that police-recorded anti-LGBT hate crimes have risen more than 300 per cent since 2011, while anti-trans crimes have risen by more than 700 per cent. The Home Office asserts that these rising rates of anti-LGBT hate crime should be at least partly attributed to improved recording practices by police and an increased willingness among victims to report incidents (Home Office, 2019). However, as we will observe below, increased reporting is also likely to be due to increases in actual incidents.

**FIGURE 2:** England and Wales Police recorded anti-LGBT hate crime 2011-2019



Source: Home Office (2019)

It should be noted that a significant proportion of anti-LGBT hate crimes are intersectional in nature. A recent study of police records in London, England found that 20 per cent of police-recorded anti-LGBT crimes were also recorded as involving racial motivation (Walters & Krasodonski-Jones, 2018).

The number of anti-LGBT hate crimes recorded in Scotland also shows an upward trend. The total incidents recorded increased by five per cent in 2018/19 to 1,176 (COPFS, 2019). Recorded anti-trans crimes remain low with just 40 recorded. The majority of recorded anti-LGBT crimes are for breach of the peace. In line with England and Wales, there have been year-on-year increases in recorded anti-LGBT hate crimes since monitoring began in 2010, bucking a trend which has seen large decreases in the reporting of other types of hate crime (e.g. race).

Statistics from Northern Ireland show that there were 180 anti-LGB and 24 anti-trans hate crimes in 2018/19 (PSNI, 2019). Analysis of trends by the Police Service for Northern Ireland showed that sexual orientation-based incidents and crimes increased generally between 2006/07 and 2015/16, reaching the highest level recorded since the data series began in 2004/05 (PSNI, 2018). At least two thirds of all sexual orientation-based crimes involved violence against the person. Recorded anti-trans crimes were too few to provide any meaningful information on trends, though it is worth noting that total recorded hate crimes against trans people for 2018/19 almost doubled from the previous year (PSNI, 2019).

Official police records of anti-LGBT hate crime reveal only part of the picture. Even with an extensive framework of legislation protecting LGBT people from discrimination and targeted crimes, many victims remain reluctant to come forward to report incidents. The issue of under-reporting remains a significant limitation to measuring and, in turn, combating anti-LGBT hate crime. Analysis of national victimisation data on hate crime in England and Wales (Home Office, Office for National Statistics and Ministry of Justice, 2013) found that the main reasons for not reporting a hate crime (generally) were:

- Police would not/could not do anything (43 per cent)
- Trivial/no loss (21 per cent)
- Private/dealt with ourselves (12 per cent)
- Common occurrence (10 per cent)
- Dislike or fear of the police/previous bad experience with the police or courts (8 per cent)
- Fear of reprisal (8 per cent)

Chakraborti and Hardy (2015) found in their research that other key reasons for not reporting included that many LGBT people feel that hate crime is “just something [they] have to put up with”, while for some there was the fear that reporting would “out” them.

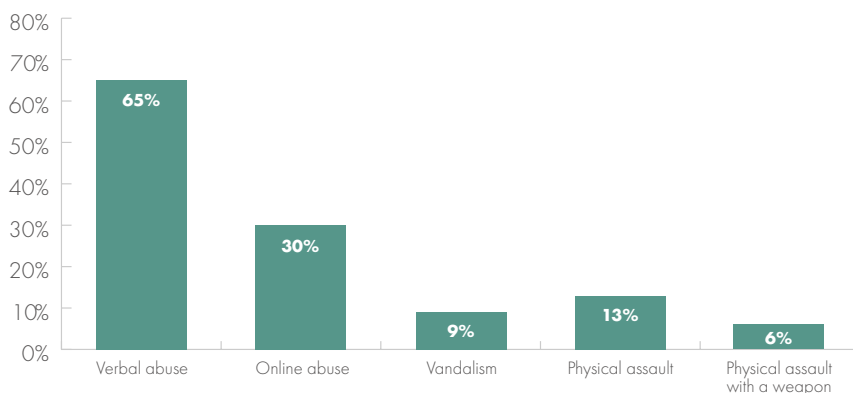
Estimating the real numbers of anti-LGBT hate crimes that occur in any given jurisdiction involves extensive random sampling of the entire population. Few countries globally conduct such extensive surveys to identify trends in crime. The Crime Survey for England and Wales is one such survey, and involves interviewing over 55,000 households across the country about their experiences of crime every year. The survey enables statisticians to estimate the number of hate crimes that are committed against people over the age of 16 each year. The most recent data showed that there are an estimated 30,000 anti-LGBT hate crimes each year, an 11 per cent increase from the previous estimates in 2016 (Walters, 2019).<sup>18</sup>

## Types of offences

Other large studies on the frequency of anti-LGBT hate crime have been conducted by Stonewall (the country's largest LGBT rights charity) and by the University of Sussex (Sussex Hate Crime Project). These surveys help to elucidate the most common types of hate crimes that occur, and not just those which are recorded by the police or prosecuted by the authorities. Stonewall surveyed 5,000 LGBT people throughout Britain. In their final report, they found that one in five LGBT people had experienced an anti-LGBT hate crime or incident in the previous 12 months (Stonewall 2017). The rate was even higher when examining the figure for transgender people only, with two in five trans people having experienced a hate crime or incident in the previous 12 months. By far the most common form of abuse suffered by LGBT people was verbal abuse and harassment; 11 per cent of victims experienced physical assaults in the previous 12 months.

Further research on the extent of anti-LGBT hate crime in the UK was carried out by the University of Sussex (Paterson et al., 2018). The researchers surveyed 2,000 people throughout England between 2012 and 2017. The researchers found that the majority of LGBT respondents had been subjected to verbal attacks, with many also experiencing online abuse (30 per cent). Overall, seven out of 10 people had been directly victimised in the previous three years. Similar to the Stonewall survey, Paterson et al. found that one in 10 had been physically attacked, while nine per cent had been victims of vandalism.

**FIGURE 3:** Percentage of participants who had been a victim of an anti-LGBT hate crime over a three-year period in England and Wales



Source: Data taken, with permission, from the Sussex Hate Crime Project (Paterson et al., 2018)

While hate crime disproportionately affects all members of LGBT communities, those who identify as transgender are most likely to experience all types of hate crime. The Sussex Hate Crime Project found that 85 per cent of trans respondents (including those who identify as non-binary and gender fluid) reported having been the victim of hate-motivated verbal abuse, while 29 per cent had experienced a physical assault (Walters et al., 2017a). 91.5 per cent of respondents also knew other trans people in their community who had experienced verbal abuse, while 73 per cent knew of other trans victims of physical assault.

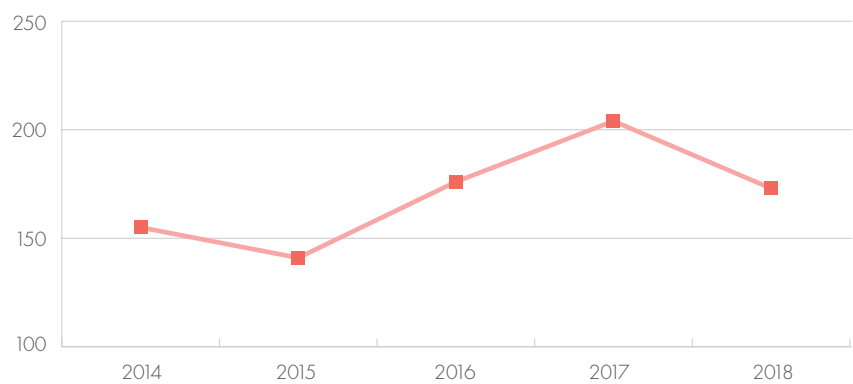
Transgender people are also more likely to experience repeat victimisation. For instance, 54 per cent of trans people reported experiencing more than three instances of verbal abuse in the past three years, compared with 19.5 per cent of non-trans LGB respondents (Walters et al., 2017a; see also Williams & Tregidga, 2013). Further, 13.5 per cent of trans respondents reported experiencing more than three physical assaults in the period, compared with 1.5 per cent of non-trans LGB respondents.<sup>19</sup> This finding concurs with research conducted in Wales by Williams and Tregidga (2013), who found that 50 per cent of transgender respondents to their survey had experienced repeat victimisation. During qualitative interviews, many participants revealed that they suffered abuse on a daily basis (Williams & Tregidga, 2013).<sup>20</sup>

## *Anti-LGBT hate crime in the Americas and the Caribbean*

### **CANADA**

In Canada, police statistics from 2014 to 2018 show comparatively few sexual orientation-based hate crimes when compared to the UK. This is partly to do with the way that Canada defines hate crimes, applying a narrower definition in law (see the discussion in our accompanying report, HDT, 2019a). However, it is also likely to be the result of the different level of public policy attention, accessibility of national police guidelines and training programmes that are offered to law enforcement personnel in Canada. Data from 2018 show that there were just 173 sexual orientation-based crimes, a drop of 15 per cent from the previous year.<sup>21</sup> The data do not identify crimes motivated by transgender or gender identity, but figures sent to the Organization for Security and Co-operation in Europe (OSCE) in 2018 indicated that there were five crimes of this type in 2018.<sup>22</sup> The majority of sexual orientation-based offences recorded by the police were violent in nature (53 per cent), while a significant proportion involved “mischief” (property offences).<sup>23</sup>

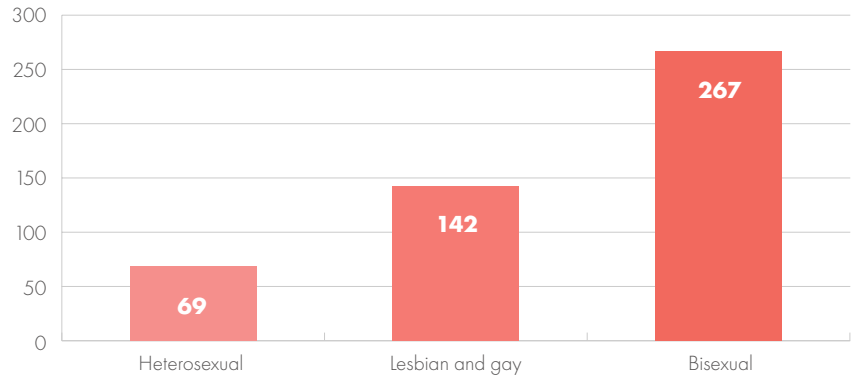
**FIGURE 4:** Canada Police recorded sexual orientation-based hate crimes 2014-2018



Source: Statistics Canada (see footnote 24).

As in England and Wales, Canada also conducts a national victimisation survey, called the General Social Survey. Estimates of hate crime are not provided as regularly as they are in England and Wales, however, with the most recent analysis of this type of crime being provided in 2014. In that year, there were more than 100,000 incidents of violent victimisation involving a bisexual victim, and more than 49,000 incidents involving a lesbian or gay victim (Simpson, 2018).<sup>24</sup> According to the survey, Canadians aged 18 years and older who identified as lesbian, gay or bisexual were significantly more likely than their heterosexual counterparts to be victims of violent crime. Most striking is the finding that, compared with heterosexual people, bisexual people were almost nine times more likely to have been sexually assaulted in the previous 12 months (Simpson, 2018).

**FIGURE 5:** Canada rates of violent victimisation, by sexual orientation, per 1,000 people



Source: Simpson (2018)



Conversely, research conducted in Europe (which included UK participants) found that both bisexual men and women were less likely to be victims of hate crime than were gay men and lesbian women (FRA, 2013). It is likely that this lower rate of victimisation is because bisexual men (in particular) are less likely to be open about their sexual orientation (FRA, 2013). However, when bisexual people are 'out' about their sexual orientation, their visibility can give rise to "double victimisation" as they can become the targets of abuse from both heterosexual people and members of lesbian and gay communities (Monro, 2015).

## THE CARIBBEAN

In the Caribbean, where a number of countries maintain laws that criminalise private consensual same-sex sexual acts between adults, hate crime against the LGBT community is commonplace. There are no official or quantitative data indicating the true extent of these incidents. Instead, we turn to a number of smaller studies that have been conducted across Commonwealth Caribbean countries that provide qualitative (and some limited quantitative) insight into the pervasiveness and nature of incidents that occur in these jurisdictions.

In Jamaica, a 2016 study of 316 LGBT people found that 24 per cent of respondents had been threatened with sexual violence in the previous five years on the basis of their real or perceived sexual orientation, gender identity or expression, while 32 per cent had been threatened with physical violence (McFee & Galbraith, 2016). These threats of sexual and physical violence were found to have "a moderately strong likelihood" of being carried out. Indeed, over the same period, 19 per cent of the respondents had in fact been sexually assaulted, while 12 per cent had been physically attacked.

### The constant fear of violence

In 2013, HRW (2014) interviewed 71 LGBT people in Jamaica over a five-week period. They found that more than half of those interviewed (44) stated that they had been victims of some form of violence based on their sexual orientation or gender identity, with some saying that this had occurred more than once. However, only 19 individuals reported their experience to the police, and in only eight cases did the police take a formal statement. A majority of individuals (26) who had experienced "anti-LGBTQI" violence stated that they did not report the crimes due to fear of retaliation from the perpetrators, or because reporting a homophobic or transphobic hate crime would "out" them to others.<sup>25</sup>

HRW (2018b) has also undertaken qualitative interviews with 41 self-identifying LGBT people from a number of other Caribbean countries, including: Antigua and Barbuda, Barbados, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines. All seven countries have laws that proscribe same-sex conduct between consenting people. HRW reported that almost all interviewees faced contact harassment and verbal abuse from other people in the community, while all interviewees stated that they had had been harassed or rejected by family at some point in their lives due to being LGBT or because they were perceived to be. The researchers found that:

Fear of isolation led people to go to extraordinary lengths to conceal their sexual orientation, including by entering heterosexual marriages. Some interviewees reported leaving unbearably hostile home environments. Others were thrown out of home, cut off from family support, and left to fend for themselves. Many experienced homelessness, and lived on the margins of society, vulnerable to rape, violence, and disease.

Others stayed at home and endured repeated violence, as some parents and siblings attempted to beat ‘the gay’ out of them. Physical violence was a constant fear for most individuals. Fifteen out of 41 interviewees stated that they had experienced physical violence, with nine having more than one experience. As with research in Jamaica, interviewees stated that they would not report the incident to the police, and those that did experienced ridicule and questions about their sex life.

## *Anti-LGBT hate crime in Africa*

The general patterns identified in Commonwealth regions of the Caribbean are also present in a number of research reports on LGBT violence in African Commonwealth countries.<sup>26</sup> For instance, in one study conducted in Kenya, just under 1,000 LGBT people were surveyed about their experiences of violence and mental health (Müller et al., 2019). The research found that in the previous 12 months, 53 per cent of respondents had been physically assaulted, yet only 29 per cent of those had reported the physical assault to the police. The research also revealed that one in four lesbian women and one in four gay men had been sexually assaulted in the previous year. This is more than triple the percentage of women in the general population, and six times higher than the level of sexual violence experienced by men in the general population. The level of violence was particularly pronounced for gender minorities, with two in five trans women (41 per cent) having been sexually assaulted in the same period.

### **Mob attacks**

The pervasiveness of physically and sexually violent homophobia and transphobia was apparent in all studies conducted across African Commonwealth countries. For instance, studies conducted in Kenya revealed that LGBT people frequently face “mob attacks”, which are often arranged by family members who become aware of the victim’s sexual orientation and/or gender identity (HRW, 2015; see also, KNCHR, 2011). HRW (2018c; 2018d) similarly found that the situation in Malawi and Ghana, where mob attacks are

common for LGBT people, can be particularly violent. For example, in Ghana in 2015, two gay men in Accra were attacked and beaten by a mob while walking on the road (HRW, 2018c). The mob questioned and tortured them in public for hours; the attackers also filmed the incident and uploaded it to Facebook as a “warning to other gay people”.

## **Sexual violence and familial involvement in abuse**

Lesbian and bisexual women are frequently subjected to so-called “corrective rape”, where cisgender men rape women suspected of not being heterosexual, in a purported attempt to “turn” them straight (ActionAid, 2009). Many women find that they are forced into heterosexual marriages to preserve their “honour” and that of their family. This often involves forced impregnation through rape, physical violence, and degrading treatment. For example, Amnesty International (2013: 49) found that in South Africa:

There has been sustained violence against lesbian women [...] Apart from the rapes and murders, there is a lot of verbal attacks and harassment. Verbal abuse occurs before and during rape [...] The conviction for rape is less than five percent. Black women are more susceptible because of their race, class, education and freedom [...] You can't look at any of this in isolation, outside of economic and socio-empowerment. You need a layered approach, first looking at the political, then the economic.

Lesbian and bisexual women are particularly vulnerable to this type of violence and abuse within the family.<sup>27</sup> Victims are reluctant to report such incidents because of shame, victim guilt, and fear of the police discovering their sexual orientation or gender identity and expression, among other reasons.

## **Severity of violence**

Research reported by the Centre for Risk Analysis at the South African Institute of Race Relations (van Heerden, 2017) highlights, for example, that in South Africa, 49 per cent of black members of LGBT communities are likely to know someone who has been murdered for being LGBT, in comparison to 26 per cent of white community members (see also Human Rights Council, 2018). The study also found that black people were the most likely to be victims of physical violence, while white people tended to experience verbal abuse. Such findings highlight both the threats to life that LGBT people face, and also the intersectional nature of such violence.

Of some solace is that the report by the Centre for Risk Analysis at the South African Institute of Race Relations notes that tolerance of the LGBT community is rising, particularly amongst younger populations and those with higher education attainment. As of 2017, 50.6 per cent of South Africans surveyed agreed that LGBT people should be afforded the same human rights as the rest of the population. Furthermore, 61 per cent disagreed that sexual orientation should be criminalised. It should be borne in mind that the Constitutional Court of South Africa decriminalised same-sex intimacy in 1998.<sup>28</sup> It is also unlawful to discriminate against someone because of their sexual orientation or gender identity.<sup>29</sup> South Africa is the only African country where same-sex marriage is legal.<sup>30</sup>

## State-led violence

Common in countries which continue to criminalise same-sex sexual activity is that the abuse and violence faced by LGBT people is not just from other members of society, but from the state agencies that are required to protect them (HDT, 2016b). The pervasiveness of homophobia and transphobia, when combined with the criminalisation of same-sex sexual activity, means that individuals live in constant fear of abuse, arbitrary arrest and detention (HRW, 2018b: Section II; HDT, 2019b).

For instance, in Kenya, HRW (2015: Section II) found that the police response to attacks and threats of violence against LGBT individuals is at best indifferent, but in many cases the police themselves commit “serious human rights violations” against victims, further compounding the hostile environment faced by LGBT people.<sup>31</sup> Similar findings have been highlighted in Ghana and Malawi, where LGBT people frequently suffer sexual assault and physical violence with little or no protection offered by the police, while in some cases reporting incidents has resulted in them being extorted, arrested, subjected to forced anal examinations, and even gang-raped by police officers (HRW, 2015; 2018b; 2018c). The same problem persists in Nigeria, where, after the introduction of the *Same Sex Marriage (Prohibition) Act* in 2014, LGBT activists and organisations reported an “increase in mob violence, often allowed by the police”, and where “people are routinely paraded in public, naked, for supposedly being caught in the act. They use the naked parade to rob, extort, humiliate, and shame” (HRW, 2016: Section II).

In Cameroon in 2018, 25 gay men were arrested in a weekend police raid targeting a cabaret and movie theatre (Jackman, 2018). According to police, the gay men were arrested because they had committed offences including “lack of a [national identity card], possession of narcotics and homosexuality” (Jackman, 2018). This pattern of arbitrary arrests through police raids has also been reported in Tanzania where, in 2018, 10 men were arrested by the police in Zanzibar after an anonymous tip off from a member of the public (Amnesty International, 2018). In this case, the Tanzanian police said they acted to stop an alleged gay wedding and in fact, when they stormed the venue, they claimed they found the men sitting “two by two”. Similar police raids have also been reported in Nigeria (BBC, 2018) and Uganda (Civil Society Coalition et al., 2014).

With the growth in technology, many individuals use online apps to connect with other LGBT people. Online apps have broken barriers to social connectivity even in situations where homosexuality is criminalised, allowing people to socialise and find relationships. However, many gay men have reported being lured by perpetrators of hate crimes online who pretend to be gay. In Kenya, reports indicate that gay and bisexual male victims have been entrapped, then often gang-raped, beaten, filmed naked and forced to give up their property, cash and banking details. Our own interviewees explained that their organisations had collated evidence of many instances where police offered little or no redress and where victims feared explaining to the police under what circumstances they met the perpetrator without incriminating themselves, due to archaic laws criminalising unnatural offences or indecent acts.

The link between the criminalisation of same-sex activity and gender expression and violent anti-LGBT hatred reveals the power of law in fostering and maintaining hostile environments for LGBT people. The Kenya National Commission on Human Rights (2011) has reflected that there is a:

[...] reluctance of State officials to indiscriminately apply and enforce the existing laws to protect and safeguard the rights of LGBTI persons. Such reluctance is further accentuated by the lack of comprehensive laws that prohibit all forms of discrimination against all persons. The lack of awareness and understanding of the LGBTI issues has resulted in the wrong beliefs by the police that it is right to punish LGBTI persons (emphasis in original).

## *Anti-LGBT hate crime in Asia and the Pacific*

A qualitative assessment of the experiences of LGBT people in Asia and the Pacific found that they too are often targeted with violence on the basis of their sexual orientation, gender identity or expression, and that this is compounded by a failure on the part of state authorities to ensure the safety of victims (APFNHRI & UNDP, 2016).

The Pacific Sexual Diversity Network found that lesbian and bisexual women in the Pacific region suffer violence in silence, often at the hands of family members and domestic partners (Pacific Sexual Diversity Network et al., 2015; see also, Fernandez & Gomathy, 2003; National Alliance of Women, 2006; CREA, 2012b). Studies conducted in India, Nepal and Bangladesh have found that lesbian women forced into heterosexual marriages faced a higher rate of physical violence than lesbian women who were not married (CREA, 2012a), while research in Sri Lanka revealed that lesbian and bisexual women forced into heterosexual marriages are often locked up at home, beaten and raped to “cure” their homosexuality (Equal Ground, 2014). Other women have been forced into psychiatric hospitals by their families, who believe that they will there be cured of “homosexuality”. For some, this has led to suicide (Human Rights Council, 2018).

### **Hate and so-called “honour” killings**

The UN Human Rights Council has reported attempts at “social cleansing” of lesbian and bisexual women through “honour” killings by their families, and so-called “conversion therapy” conducted on women at the behest of their families (HRC, 2018: para 27). For instance, two suspected lesbian women were killed by their relatives in India in a purported attempt to “salvage” the “honour” of the family: the women were accused of bringing a “bad name to the community”, and “spoiling the image of their family”. Witnesses told the police that the killings were “necessary” to “save” the honour of the family (Badash, 2011).

Attacks on gay men by family members have also been reported in Papua New Guinea, with victims being raped, beaten, and even murdered (Tencic, 2014). In 2018, LGBT rights campaigners reported that at least three gay men had been murdered by their family and neighbours due to their sexual orientation (Agbo, 2018). A survivor of violence recounted how his attackers pelted him with stones and bottles before he managed to escape.

## **Legalising hate and the legacy of state mandated bias**

The common theme of criminalisation and its causal relationship with targeted violence again appears across the research in Asia. In Papua New Guinea, stigma, violence and discrimination incited by laws criminalising same-sex sexual activity continue to put LGBT people at risk, while in Bangladesh it has been asserted that violence against LGBT communities is, in large part, committed with impunity (APFNHRI & UNDP, 2016). Away from continental Asia, a similar pattern of anti-LGBT hate crime is found in Singapore, where consensual same-sex sexual activity between adults is criminalised with imprisonment of up to two years. HRW (2017) has found that the rights of LGBT people are severely restricted in that country; while the Singapore government does not “proactively enforce” criminal sanctions (Xu, 2015), LGBT activists state that criminalisation affects the “entire LGBT community”, and have been documenting cases of violence and discrimination against the community for several years (Mosbergen, 2015). In 2015, activists reported that lesbian and transgender women were assaulted based on their appearance, with some victims enduring sexual assault. For example, a transwoman reported that she was gang-raped at a hotel room but chose not to report the incident to the police (Mosbergen, 2015). This underreporting of violence and discrimination is common in Singapore. This might also be attributed to a lack of visibility of LGBT people, since LGBT organisations are unable to officially register in the country (ILGA, 2016); for example, an organisation that provides psychosocial support for transgender people was denied registration in 2017 on the vague grounds of “national security or interest” (HRW, 2017).

Trans and gender diverse people are frequently affected by laws relating to vagrancy, offending decency and good customs, impersonation, loitering, and public order (HDT, 2016b; 2019b). They are targeted with violence by state and non-state actors because of their gender expression and appearance rather than their presumed sexual orientation. Further, some countries, such as Malaysia, have sharia (Islamic) law provisions that explicitly prohibit and punish the gender expression of transgender and gender diverse people (HRC, 2018; see also IGLHRC, 2016). One of our interviewees representing a leading international human rights charity reflected that anti-LGBT hate crimes are an effective tool to silence and invisibilise people. This perpetuates the cycle of ignorance in which violence occurs with impunity.

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***Individual LGBT victims are most affected, but there is also a general chilling message to the public – go underground or leave the country.***

(Interviewee 02)

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While there appears to be a cogent nexus between anti-LGBT laws and public anti-LGBT hostilities, reform of the law does not guarantee the eradication of hate crime. For example, in Fiji, despite constitutional protections existing against discrimination on the basis of sexual orientation and gender identity, social biases and reports of violent attacks on gay men (Movono, 2017) and the recent murder of a transgender activist on the International Day Against Transphobia (Fox, 2018) have heightened fear and intimidation in the LGBT community. As one of our interviewees opined, “the rule of law is one thing, political will is another” (Interviewee 03). Without genuine leadership by government and politicians challenging anti-LGBT hatred, the law may have little impact on hate crimes.

### *Article 26(3)(a)*

A person must not be unfairly discriminated against, directly or indirectly on the grounds of his or her — (a) actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy;

*Fijian constitutional protection against SOGI-based discrimination*

Even in Commonwealth Pacific countries with legal environments which are protective of the rights of LGBT people, such as New Zealand<sup>32</sup> and Australia, LGBT people continue to report personal and institutional bias on the basis of their real or perceived sexual orientation, gender identity or expression.<sup>33</sup> The Australian Human Rights Commission (AHRC) conducted a nationwide consultative research study which found that 72 per cent of those surveyed had experienced violence, harassment or bullying because of their sexual orientation, gender identity or intersex status (AHRC, 2015: 16).<sup>34</sup> The study also found that 91 per cent of LGBT people in Australia knew someone who has experienced violence on the basis of their sexual orientation and gender identity.<sup>35</sup>

The AHRC emphasised that the prior criminalisation of consensual same-sex sexual activity and current laws that deny equality to LGBT people have created a legacy of state-mandated bias that still affects LGBT people today (AHRC, 2015). They conclude that:

Direct structural [legislative] discrimination denies equal treatment of LGBTI people [...] It amounts to State-sanctioned discrimination. This has immediate and negative effects on LGBTI people [...] When law is used to sanction discrimination it legitimises institutional and interpersonal discrimination. State-sanctioned discrimination can facilitate an environment in which discrimination towards LGBTI people is normalised. This has adverse consequences for the health and wellbeing of LGBTI people (AHRC, 2015: 14).

## Conclusion

The research documented in this report across a wide range of Commonwealth countries illustrates the extent to which LGBT people experience hate crime. However, there remains a lack of comprehensive data detailing the day-to-day realities of anti-LGBT hostility across the Commonwealth. The available data likely reveal just a snapshot of the true extent of violence in these regions. In countries that maintain laws criminalising LGBT people, many of these hate crimes remain chronically underreported due to a lack of confidence in law enforcement and a fear of further reprisals. In such countries, the law is not only inadequate in protecting LGBT people against targeted violence but is itself a source of hostility, contributing to environments where violent hate crimes are likely to be more prevalent, brutal and locally tolerated compared with jurisdictions without oppressive laws. Nonetheless, even in countries which have a favourable legal environment for LGBT people, as shown, for example, by law enforcement data from England and Australia, hate crime continues to be prevalent.



# Perpetrators

There is no single 'type' of perpetrator of anti-LGBT hate crime. The types of perpetrator who commit such crimes can differ markedly depending on the location and the relationships that exist between victim and perpetrator (Chakraborti et al., 2014).

## The role of gender

There are two main categories of perpetrator of hate crime against LGBT people: state and non-state actors. In relation to the former, there have been three large scale studies on hate crime perpetration conducted in England (Chakraborti et al., 2014; Walters & Krasodonski-Jones, 2018) and in Wales (Williams and Tregidga, 2013) that have shed some light on the profiles of anti-LGBT perpetrators of hate. Quantitative surveys on hate crime and analysis by police indicate that the majority of non-state perpetrators (of all types of hate crime) are men (see e.g. Chakraborti et al., 2014; Walters & Krasodonski-Jones, 2018). In terms of type of anti-LGBT hate crime offenders, the *All Wales Hate Crime Project* reported that 100 per cent of transphobic hate crimes were committed by men, compared to sexual orientation (82 per cent), religion (78 per cent), race (72 per cent), and disability (71 per cent) (Williams & Tregidga, 2013: 47). Walters and Krasodonski-Jones' (2018) analysis of more than 6,000 police records similarly found that 86 per cent of anti-trans and 85 per cent of sexual orientation-based hate crimes were committed by men, a higher percentage than all other types of hate crime.

These findings suggest that gender plays a greater part in explaining anti-LGBT hate crime compared with other types of hate crime. It has been theorised that gay men who fail to behave 'as men should', and trans women who, viewed as 'biologically male', transgress gender binaries are perceived by many cisgender men as posing a threat to dominant male identity (Perry, 2001: Ch 4). Academics have asserted that where transgressions of masculinity become visible, some men will take it upon themselves to actively police the boundaries of male heterosexuality by inflicting brutal forms of violence on individuals perceived as transgressors (Perry, 2001: Ch 4). At the same time, these expressions of anti-LGBT violence can help to reinforce the perpetrator's own masculinity, and reinforces to others the heterosexual male dominance that must be maintained within society (Franklin, 2000).

## Victim-perpetrator relationships

The pattern of hate crime offending is likely to vary in different parts of the Commonwealth, with qualitative studies in the Global South suggesting that family members are often the main perpetrators (or instigators) of abuse and violence against LGBT people, while studies in the UK suggest that most anti-LGBT hate crime perpetrators are strangers (Chakraborti et al., 2014; Walters & Krasodonski-Jones, 2018). Family members who perpetrate anti-LGBT hate crimes, primarily in Commonwealth countries in Africa and Asia, are often concerned with redressing the perceived shaming of the family, honour, and social and religious respectability.

In the UK, while research has indicated that most hate crimes are perpetrated in public spaces by strangers, data also reveal that a significant minority of cases involve perpetrators known to the victim (Chakraborti et al., 2014). In the largest survey of its kind, the UK Government Equalities Office surveyed more than 100,000 LGBT people in the UK, finding that 29 per cent of respondents had experienced an incident because they were LGBT which involved someone they lived with (Government Equalities Office, 2018). The most common types of incident included verbal harassment (14 per cent), disclosure of LGBT status without permission (14 per cent), and coercive or controlling behaviour (nine per cent).

## Group offending

Anti-LGBT hate crimes are also likely to be carried out by groups of young offenders (McDevitt et al., 2002). Walters and Krasodonski-Jones' (2018) study found that anti-trans and sexual orientation-based hate crimes were more likely to have more than one offender compared with all other types of hate crime. This type of group behaviour has been linked to toxic masculinity within groups of young men who are often fuelled by alcohol and partly motivated by the 'thrill' that comes with attacking LGBT people (McDevitt et al., 2002; Franklin, 2000). In such cases, groups of young men often go in search of victims as part of a thrill-seeking exercise that brings the group a sense of fun and excitement, while simultaneously enabling them to demonstrate to one another their masculinity through displays of violence against other males who they perceive as failing to perform the "correct" type of maleness (Franklin, 2000). In relation to 'mob attacks' common in Africa, attacks are more cogently explained as being motivated by a desire to eradicate the perceived evil of homosexuality, and as conveying a clear message to others that homosexuality will not be tolerated in the community (HRW, 2018d).

## Law enforcement as perpetrators of hate crime

Our analysis above has revealed that a significant proportion of anti-LGBT violence is committed by the police in countries where officers are tasked with enforcing existing anti-LGBT laws. The law in effect provides a legal basis to demonstrate hostility towards LGBT people, often leading to severe forms of physical and sexual violence being inflicted upon victims. Such incidents occur within a social environment that has enabled discriminatory and unlawful court orders authorising anal examination, the flogging and caning of victims, as well as ministerial directives and local ordinances stipulating corporal punishment for homosexuality. Political speeches advocating that all LGBT people be eradicated from society, and further endorsement by religious leaders of homophobia, also support the social acceptance of state-led violence against LGBT communities.

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While isolated incidents of state-actor hate crime still occur in countries such as the UK, Canada and Australia, the human rights-compliant legal framework and growing cultural acceptance of LGBT people mean that such incidents are now relatively rare.<sup>36</sup>

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- 17 See OSCE ODIHR Hate Crime Reporting at <http://hatecrime.osce.org>.
- 18 Numbers are too few to provide reliable estimates of anti-trans hate crimes.
- 19 See also, Turner et al.'s (2009) online survey of 2,669 trans people across Europe, which found that trans people are three times more likely to experience a hate incident or hate crime than lesbians and gay men. Note also that there is some research to suggest that trans women of colour are disproportionately affected by hate crime, especially involving sexual violence (Bettcher, 2007).
- 20 See similarly, Perry & Dyck (2014) in the Canadian context.
- 21 ODIHR OSCE Hate Crime Reporting, available at <http://hatecrime.osce.org/canada>.
- 22 Police-reported hate crime by type of motivation. Available at <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510006601> (last accessed 24 January, 2020).
- 23 Police-reported hate crime, 2017 (released 28 November 2018). Available at <https://www150.statcan.gc.ca/n1/daily-quotidien/181129/dq181129a-eng.htm> (last accessed February 2020).
- 24 Note that these figures do not specify whether the crimes are motivated by bias.
- 25 See similar findings above for England and Wales (Home Office et al., 2013; Chakraborti & Hardy, 2015).
- 26 See, for example: Malawi (HRW, 2018b); Ghana (HRW, 2018c); South Africa (IRR, 2017); Nigeria (HRW, 2016); Kenya (HRW, 2015).
- 27 For a detailed analysis of the criminalisation of lesbians and bisexual women and its impacts, see: Human Dignity Trust, *Breaking the Silence* (2016). Available at: <https://www.humandignitytrust.org/wp-content/uploads/resources/Breaking-the-Silence-Criminalisation-of-LB-Women-and-its-Impacts-FINAL.pdf> (last accessed 10 March 2020).
- 28 *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others*, 1998 (12) BCLR 1517 (CC).
- 29 Constitution of South Africa, section 9.
- 30 *Civil Union Act 2006* (South Africa).
- 31 Research based on interviews with 86 LGBT people.
- 32 There is a lack of data on New Zealand. For analysis of hate-based bullying in schools, see New Zealand Ministry of Education (2019).
- 33 Mason's (2019) analysis of New South Wales police data found that 14 per cent of hate crimes recorded by the police are sexual orientation- and/or gender identity-based offences.
- 34 A 2012 study published by La Trobe University in Australia found that 25.5 per cent of LGBTI people had experienced abuse or harassment due to their sexual orientation and gender identity in the previous 12 months, with another 8.7 per cent experiencing physical violence and threats (Leonard et al., 2012).
- 35 As with other studies in England and Wales, and elsewhere, research in Australia reveals how trans and gender diverse people in Australia are more prone to violence on account of their gender identity and gender expression (Leonard et al., 2012; Hyde et al., 2014).
- 36 Though note that some research has suggested that LGBT people in these countries are still likely to have negative experiences of the police (Walters et al., 2017a).

# **Section 3:**

## **The impacts of anti-LGBT hate crime**

Hate crimes have significant impacts on individual victims, LGBT communities, and broader society. Every hate crime targeting an LGBT person is a direct attack against their identity and that of those who share similar characteristics. These identity-based crimes are likely to affect individuals and other community members at a much deeper level compared to similar non-hate-motivated crimes (Herek et al., 1999; Paterson et al., 2019a). Crimes of this nature also affect society more generally, with each incident contributing towards a hostile social environment that promotes anti-LGBT antipathy, while democratic commitments to values and principles, including equality, dignity, inclusion and respect, are directly undermined. Below, we set out in detail the types of harm caused by such crimes.

## Individual impacts

Hate crimes are a direct attack on the victim's identity. Many such attacks are likely to be violent, and as our analyses of the extent and nature of incidents above reveals, anti-LGBT hate crimes are more likely than other forms of victimisation to result in physical injuries (see e.g. Home Office et al., 2013; see also Cheng et al., 2013). Whether physical or verbal, the impacts of all types of anti-LGBT hate crime can be severe. Any demonstration of hostility towards the victim based on their sexual or gender identity will likely make them aware that they are being targeted because of who they are. This is not to suggest that all victims of hate crime will be affected in exactly the same way; there are many variables that influence the impacts of a crime. However, most anti-LGBT incidents will generate a unique set of challenges that will be faced by most victims, which are directly connected to their identity, and their internal awareness of what their identity means in broader society (Walters, 2014: Ch 3).

### Emotional and psychological harms

When a victim is attacked because of their LGBT identity they are likely to experience a sense of heightened vulnerability (Herek et al., 2002). This sense of vulnerability relates to two elements of victimisation. The first sense refers to the victim's perceived risk of being attacked again based on their group identity as a member of the LGBT community. The second element of vulnerability relates to the level of harm that they are likely to experience, and which is directly linked to the first aspect of vulnerability. In particular, the victim's perceived risk of repeat victimisation serves to exacerbate feelings of anger and anxiety (Herek et al., 2002; Paterson et al., 2018; 2019a).

In the section above, clear evidence was offered that LGBT people frequently experience repeat forms of victimisation. This ongoing experience of hate and hostility further elevates their feelings of vulnerability and the negative emotional reactions that follow this (see e.g. Walters et al., 2017a). Typically, victims of crime will quickly try to make sense of what has happened to them in an attempt to reassure themselves that the world is a just and fair place (Garnets et al., 1992). Generally, victims of crime may think that they were simply unlucky, or in the wrong place at the wrong time, or that they had wrongly provoked the offender and will behave differently in the future.

However, for hate crime victims, their attempts at bringing stability and security in the aftermath of victimisation are hampered by the fact that they have been purposively targeted because of an immutable characteristic. Victims of hate crime become aware that it is their very being that makes them a target. One of our interviewees explained:

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*Once you have been targeted because of who you are, it changes you. You learn to look over your shoulder. You have no luxury of safety. You blame yourself; you question how you were dressed.*

(Interviewee 03)

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For many victims, their experience of homophobia, biphobia or transphobia is internalised, leaving them feeling that they deserve to be punished for being 'different'. This internalisation of prejudice can bring with it one of the most negative of all emotions: shame (Herek, 2004; Paterson et al., 2018). Feelings of shame will be particularly intense for those who live in environments where their LGBT identity is socially and legally denounced. In jurisdictions that criminalise same-sex intimacy and certain gender identities and expressions, often accompanied by denunciatory and derogatory language, the message will be very clear that their identity as LGBT is morally wrong and socially rejected. This is likely to give rise to a heavy emotional burden upon which any targeted victimisation must be processed. Society has already told victims that to be gay, for example, equates to their being less decent, to being dirty and even immoral when compared to others (Noelle, 2002). Experiencing brutal forms of victimisation only confirms to them their 'deserved' inferiority.

A quote from an interviewee from HRW's research in Nigeria illustrates how LGBT people are ashamed to talk about the abuse they experience and how they are afraid of being exposed:

*Lesbian women do not like to talk about these things that happen to them. It's too difficult and they feel ashamed. Also, many of the LBT women are afraid of coming to our offices because we share a space with MSM [...] police are always coming around to ask what is going on in the building [...] They feel they would be exposed. So where can they get help? Nowhere (HRW, 2016).*

As a result of both internalised and externalised experiences of anti-LGBT hostility, many victims will try to change how the outside world sees them in order to 'fit in'. This can involve changing their appearance, voice or physical mannerisms, and avoiding showing any affection to other people of the same gender (see further, below, 'Community Impacts').

It is unsurprising that almost all studies on hate crime victimisation show that victims are more likely to experience heightened levels of depression, anxiety, safety concerns, and anger than victims of crimes that are not motivated by bias (Herek et al., 2002; McDevitt et al., 2001; Paterson et al., 2019a). One of the largest anti-LGBT hate crime victimisation studies ever to be conducted in the UK (Paterson et al., 2018) found that victims of such crimes are likely to experience:

- An altered sense of safety, making individuals feel more vulnerable and anxious;
- Increased feelings of anger and a sense of injustice;
- Increased suspicion of others and social withdrawal; and
- A motivation to increase LGBT community engagement through specialist groups and charities.

Many LGBT victims will seek out a safe space in order to feel secure, while also pursuing greater LGBT community engagement as a means of feeling supported (Paterson et al., 2018). This can be a very difficult road to navigate, since, as we have observed above, many anti-LGBT hate crimes occur in both public spaces and within the home by family members. There are often no physical LGBT spaces or other visible members of the LGBT community to coalesce with. For some victims, there is literally no safe space to which they can retreat. This can result in “hyper-vigilance”, whereby individuals are constantly aware of their surroundings and the potential for violence (Perry & Dyck, 2014: 58).

The lack of social and emotional support in many Commonwealth countries means that victims find themselves completely isolated and alone (Walters et al., 2017a). The persistence with which many LGBT people experience hate-based abuse results in them feeling completely unsupported by almost everyone around them (see also Perry & Dyck, 2014). The lack of confidence in the police and the government is likely to further compound individuals’ feelings of isolation, fear and societal rejection (Walters et al., 2017a). Perry and Dyck (2014) note that where LGBT people are rejected from all sections of society, they can completely lack any confidence and/or love for themselves, and instead can feel a deep sense of self-loathing.

For many victims, the consequences can be fatal. The HRW (2015) study in Kenya found that 44 per cent of LGBT people who had experienced violence suffered from post-traumatic stress disorder as a result. Moreover, one in five LGBT people in the study had attempted suicide (22 per cent), with a peak of 32 per cent in the lesbian community (HRW, 2015; see also O’Brien et al., 2017). Research by Williams & Tregidga (2013) in Wales similarly found that nearly half (46 per cent) of anti-trans hate crime or incident victims reported having thoughts of suicide, while other studies have reported that almost one in two young trans people have attempted suicide (Strauss et al., 2017). In a small study involving six trans men in Bangladesh, all interviewees had attempted suicide at least once (HRW, 2018a).

# Hate crime as message crimes – community impacts

Hate crimes are ‘symbolic crimes’, meaning they communicate to members of the victim’s group that they are not welcome and are unsafe in the community they live in (Bell & Perry, 2015). One of our interviewees based in Kenya explained that:

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*The message in these hate crimes is very clear, that we are attacking to set an example, the rest of you need to change and get cured or leave the country; else you will die.*

(Interviewee 04)

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Iganski (2001) has referred to these indirect impacts as “waves of harm”, as the effects of individual anti-LGBT hate incidents ripple out to affect other LGBT people. The potency of hate crimes as “message crimes” is that they are aimed at terrorising entire groups of people (Perry & Alvi, 2012). Media and social media coverage of anti-LGBT violence can inadvertently help to promote a message of danger to LGBT communities (Paterson et al., 2019b), leading to what has been referred to as the ‘*in terrorem*’ effect of hate crime (Iganski, 2001; Perry & Alvi, 2012).

The proliferation of anti-LGBT violence generates a climate of fear amongst LGBT people, who worry that they too will be attacked (Iganski, 2001). Bell and Perry’s (2015) small focus group study into the community impacts of anti-LGB hate crimes in Canada found that LGB people felt personally threatened as a consequence of sharing a victim’s LGB identity. Quantitative research in the UK by Paterson et al. (2018; 2019a), who used multiple surveys and experiments, found that simply knowing an LGBT person in the local community who had been a victim of a hate crime had significant impacts on participants’ emotions (causing heightened levels of anger and anxiety and, in some cases, shame). These emotional reactions were directly linked to LGBT people’s perception of threat that they feel about their personal safety and identity. The researchers additionally reported that the emotional reaction of anxiety was correlated with avoidant behaviours amongst LGBT people (e.g. avoiding certain locations), while the emotion of anger predicted more proactive behavioural responses (such as joining rights-based advocacy groups, community-focused charities, and being more active on social media) (Paterson et al., 2018).

The same researchers also tested the effects that media coverage of anti-LGBT hate crimes can have on other LGBT people (Paterson et al., 2019b). Media exposure to anti-LGBT hate crimes had lasting impacts on individuals’ emotions, highlighting that LGBT people, as a whole, live with the knowledge that they may be physically attacked at any time (Paterson et al., 2019b). Key to understanding these indirect impacts are the



empathic responses that LGBT people have for one another. Multiple studies conducted by Paterson et al. (2018; 2019a) and Walters et al. (2019) found that LGBT community members were more likely to feel connected to one another, via their use of LGBT communal space, but importantly also because they shared a common characteristic. This sharing of a group identity meant that LGBT people vicariously experience the pain and suffering of other community members, resulting in emotional reactions to anti-LGBT hate crimes similar to those who are directly targeted (Walters et al., 2019).

In response to pervasive forms of homophobia, biphobia and transphobia, many LGBT people attempt to change the way that they look, speak and behave in order to avoid victimisation. In countries that criminalise same-sex intimacy and certain gender identities, this hiding of LGBT identity can be a matter of life and death. For instance, the *Same Sex Marriage (Prohibition) Act* enacted in Nigeria in 2014 instilled much fear in gay men. A 21-year-old gay man in Lagos interviewed by HRW (2016) stated:

I act very normal and pretend to be straight wherever I go. I have to act normal so that I don't bring attention to myself. If you don't act normal, all eyes will be on you and you don't want that to happen.

As a result of these laws and the hostile environment they foster, many thousands of LGBT people living in the Global South have had little choice but to seek asylum in Europe, Canada and the USA (see e.g. Stonewall, 2016). Others have migrated for 'economic reasons' and as a form of self-imposed exile without revealing the violence and persecution they suffered on account of their sexual orientation and gender identity, which was the true primary reason (Interviewee 05). Unfortunately, not all LGBT people seeking asylum have been met with open arms. Many have experienced degrading questions and examinations about their sexual and/or gender identity, while those who have ended up in detention centres can experience harassment and abuse from other detainees (Stonewall, 2016).

## Social and economic harms

Hate crimes can also have economic costs. Those working in the field have observed that many of those who have suffered violence are often rendered poorer and more economically vulnerable, having to manage the mounting costs of treating injuries and relocation to escape persecution (Interviewee 01). This can be the case even in the wealthiest Commonwealth countries. For example, in one study in England and Wales, interviewees were asked whether they had experienced any financial costs, housing difficulties and/or employment difficulties as a direct result of their hate victimisation (Walters, 2014). A significant number of the interviewees stated that they had experienced difficulties in all three areas, with some losing their jobs as a direct result. This issue is further compounded in Commonwealth countries where there is no anti-discrimination employment protection for LGBT people. For many victims, this means that they are unable to get work, not only because of their traumatic experiences of hate crime, but because few employers would employ LGBT people in the first place (see, for example, HRW, 2018d).

Many victims of anti-LGBT hate crime wish to move away from the location where they were targeted, but most are unable to afford such measures. Some victims have spoken of persistent false complaints made by their neighbours to housing associations about them, which they believed to be based on prejudice against their identity (Walters, 2014: Ch 3). In some cases, this has resulted in threats of eviction and a risk of homelessness.

These economic impacts ultimately erode victims' capacity to fully participate in society. In turn, this has a broader economic impact on society, reducing individuals' productivity and their contribution to the economy. One of our expert interviewees highlighted how such a state of affairs can have both a social and economic cost for a country. Speaking about Kenya, she notes:

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*We allow a subset of society to live a different, difficult life as if they are unwanted. Hate crimes render many LGBT people not in charge of their lives, they are not able to participate meaningfully in the Kenyan society. Hate crimes makes the Kenyan society appear less welcoming to investors and tourists. This makes it harder for Kenya to place herself as a growing/developing country that is inclusive compared to other countries.*

(Interviewee 04)

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The precise costs this has in any given jurisdiction are unclear, though in the UK there are plans for the Home Office to attempt to estimate the economic impacts of hate crimes. Research from the World Bank shows that a country's economic growth is inversely correlated with the level of state-sponsored discrimination and violence against ethnic, religious and sexual minorities under the law (Panter et al., 2017).

## Societal (structural) harms

By definition, all crimes undermine society's moral code. However, crimes motivated by hate and hostility not only breach society's rules, they serve to undermine a state's commitment to fundamental principles that underpin its governance structures, such as equality, dignity, and respect. These are principles that all Commonwealth jurisdictions have signed up to in the Charter of the Commonwealth, which emphasises:

*the need to promote tolerance, respect, understanding, moderation and religious freedom which are essential to the development of free and democratic societies, and recall that respect for the dignity of all human beings is critical to promoting peace and prosperity (Commonwealth, 2013: IV).*

As members of the UN, Commonwealth countries are also obliged to provide effective protection against sexual orientation and gender identity discrimination (see HDT, 2019a: Section 2). Further, there are regional human rights organisations that specifically protect against discrimination based on sexual orientation and gender identity. For example, Commonwealth countries in Africa are also members of the African Union. Its human rights body, the African Commission on Human and Peoples' Rights, which in 2014 adopted the Resolution on Protection Against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.

As has been reiterated throughout this report, the criminalisation of same-sex intimacy and certain gender identities is in direct contradiction to these principles and legal commitments. Criminalising same-sex intimacy delegitimises gay people as not 'normal' and punishes them for acting outside socially prescribed norms – which are shaped predominantly by cisgender heterosexual males. These laws provide strong foundations for a social environment that supports state and non-state actors committing acts of violence with impunity. Such a situation means that many Commonwealth states continue to violate the human rights of LGBT people, in direct contradiction of the societal principles they profess to embrace.

## Common themes

In concluding this section, we highlight the common themes that run across the data and literature on anti-LGBT victimisation throughout the Commonwealth:

- LGBT people are disproportionately subjected to criminal acts of violence and abuse;
- Anti-LGBT hate crimes are more likely than similar non-hate-based crimes to be accompanied by high levels of physical violence;
- LGBT people are likely to be repeat victims of hate crime;
- Sexual violence is used as a weapon against all LGBT people;
- Perpetrators of anti-LGBT hate crimes frequently act in groups;
- In countries that criminalise same-sex intimacy, state-actors, particularly the police, are common perpetrators of anti-LGBT violence, meaning that victims are reluctant to report experiences of victimisation;
- Anti-LGBT hate is often intersectional, meaning that people of certain ethnic backgrounds and genders are more likely to experience anti-LGBT victimisation;
- Anti-LGBT hate crime is likely to have an enhanced impact on all LGBT people; and
- LGBT people are likely to indirectly experience similar emotional impacts to direct victims where they have read or heard about incidents.

While there are clear commonalities across jurisdictions with regard to LGBT people's experiences of hate-motivated crime, there are also a number of differences that emerge from the literature.

# Differences in experiences

## *Regional differences*

- LGBT people in countries that criminalise same-sex intimacy (mostly the Global South) are frequently victimised at home by family members, including being raped and forced into 'heterosexual' marriages;
- 'Mob attacks', where individuals are publicly shamed and sometimes tortured occur mostly in countries where same-sex intimacy is criminalised – though it should be noted that hate crimes against LGBT people in the Global North are also commonly committed by groups of offenders; and
- LGBT people in Commonwealth countries in Africa and Asia commonly experience a combination of hate and so-called 'honour' crimes, where identity-based prejudice gives rise to familial shame, leading family members to perverse attempts to restore the family's honour through acts of violence.

## *Identity-based differences*

- While there is evidence that all LGBT people experience sexual violence as a form of hate crime, data suggest that lesbian and bisexual women are often victims of so-called 'corrective rape', and are being forced into marriages where sexual violence is regularly inflicted upon them, ostensibly in an attempt to 'cure' their perceived lesbianism (see HDT, 2016a);
- Data from Canada suggest that bisexual women are most at risk of sexual violence compared with lesbian women and gay men. Conversely, bisexual men and women may be less likely to experience physical violence due to the fact that they are less likely to be open about their sexual orientation. However, where they are 'out', bisexual people can experience prejudice from both within and outside the LGBT community;
- There is some evidence to suggest that 'outed' gay men are more at risk of mob attacks and physical violence resulting in injury;
- There is evidence to suggest that gay men experience state-sanctioned torture and extortion in countries where same-sex intimacy is criminalised; and
- Research indicates that trans people (including trans women, trans men, and non-binary people) are disproportionately subjected to hate crime compared with cisgender LGB people. They are also more likely to experience repeat forms of victimisation. Further, there is some evidence to suggest that trans people are most likely to be victims of sexual violence and homicide. Although quantitative data are not available from Commonwealth jurisdictions, at the global level, data from the Trans Murder Monitoring project show that, between 2008 and 2018, almost 3,000 transgender people were murdered worldwide. This is likely to be a significant underestimate, given that states often fail to recognise trans identities, and are sometimes implicated in the crimes themselves.



# **Section 4:**

## **Recommendations**

This section offers recommendations that we believe will help Commonwealth states to identify and combat anti-LGBT hate crimes. The report does not intend to outline 'what works' in preventing hate crime; there is limited research in this field and further studies are needed to identify best practices that help to reduce anti-LGBT hostility.<sup>37</sup> Before interventions can be successfully implemented to tackle anti-LGBT hate, states must first identify who the victims of anti-LGBT hate crime are, what types of crimes they are likely to experience, when these incidents occur, and where they are likely to take place (see e.g. Walters & Krasodonski-Jones, 2018). As a first step in identifying the who, what, when and where of anti-LGBT hate crime, governments must recognise that anti-LGBT hate crime exists, which is most effectively demonstrated through the introduction of hate crime legislation. However, having hate crimes on the statute books will not necessarily mean that incidents will be recorded and measured, and that victims will receive the support they so desperately need. The successful application of hate crime laws will depend largely on the policies, guidance and monitoring mechanisms that are implemented alongside any new legislation.

## Enacting hate crime legislation

In conjunction with our linked report, *Legislating to Address Hate Crimes against the LGBT Community in the Commonwealth*, we recommend that all Commonwealth states enact laws that specifically proscribe anti-LGBT hate crimes, or which give powers to the courts to enhance penalties during sentencing where anti-LGBT hostility or hate is proved.

There are five distinct reasons why member states should enact legislation:

1. That disproportionate levels of anti-LGBT hate crime, and the enhanced harms they cause, should be recognised in criminal laws that seek to prevent such crimes, and which carry a deservedly increased penalty.
2. That the commission of anti-LGBT hate crimes carries with it a higher degree of moral culpability as perpetrators are responsible not just for their violent conduct, but also for the enhanced harms that they are likely to cause to individuals and communities, as well as for undermining fundamental principles (e.g. equality and respect) that underpin democratic societies.
3. That laws proscribing anti-LGBT hate crimes will send a strong denunciatory message to society that such crimes will not be tolerated, and that the application of these laws can help to reverse widespread anti-LGBT hostility and violence.
4. That the enactment of hate crime legislation sends an important symbolic message to LGBT communities that the state will protect them from hate crimes. Laws also represent recognition of the harms that LGBT communities have suffered historically, and play an important role in fostering social cohesion and development.
5. Hate crime legislation provides an important public policy focus on tackling anti-LGBT hostilities. This, in turn, helps to ensure that police forces and other criminal justice agencies attend to the hate element of reported offences. Goodall and Walters (HDT 2019a: 18) assert that "[w]ithout legal classification it is less likely that a state will create special measures and policies aimed at monitoring and measuring anti-LGBT crimes."

The types and models of legislation that can be utilised by Commonwealth member states is set out in our linked report (HDT, 2019a). The application of legislation is supported where there is detailed guidance for prosecutors on managing hate crime cases (see e.g. CPS, n.d.) and sentencing guidelines outlining courts' obligations under the relevant laws (see e.g. Sentencing Council, n.d.).

## Establishing public policies, operational guidance and monitoring mechanisms

Connected to the legislative proscription of anti-LGBT hate crime is the obligation this can put on state agencies to monitor and record such offences. Collection of anti-LGBT hate crime statistics allows for evidence-based policy decisions by states in their role as protector of all citizens against violence and crime. Such data are also useful in identifying the prevalence and patterns of hate-based violence, which is useful in preventing, responding to and future institutional planning to tackle the problem.

We recommend that states introduce mechanisms that allow them to document the hate element of any crime committed against an LGBT person. This is typically done through the addition of tick boxes on online crime reporting systems or on pre-prepared crime recording sheets. The 'flagging' of an offence specifically as a hate crime is essential if prosecutors are to identify anti-LGBT offences for prosecution. Only where the hate element of a crime has been brought to the attention of the courts will hate crime legislation be applied.

The correct flagging of cases will be facilitated where there are public policies and guidelines detailing what hate crime is and how it should be recorded. For example, in England and Wales the College of Policing has produced a National Policing Hate Crime Strategy (College of Policing, 2014), as well as the Hate Crime Operational Guidance (College of Policing, 2014). The strategy commits the police to "prevent, positively respond to and reduce the underreporting of hate crime", while the guidance defines hate crime (including anti-LGBT incidents), and includes information on: minimum standards for responding to victims; investigating and supervising offences; intelligence and performance measures; and how to engage and consult with relevant communities.

States should plan and allocate resources for police forces to engage in ongoing training in order for officers to fully understand how to identify relevant cases, and to ensure that appropriate evidence is collected for prosecution and monitoring purposes (see e.g. Walters et al., 2017b). A number of international organisations provide training programmes in this regard.<sup>38</sup>



## Decriminalisation

For hate crime laws and policies to work most effectively, they must operate within a broad statutory framework that is supportive of LGBT rights. There is likely to be some confusion amongst law enforcement officers where the state both criminalises same-sex intimacy or certain gender identities while simultaneously criminalising those who target LGBT individuals for abuse. In concordance with numerous human rights bodies, including the United Nations Human Rights Council, and previous Human Dignity Trust reports, we therefore recommend that Commonwealth states move to decriminalise same-sex intimacy and nonconforming gender identities (HDT, 2016b; 2019b).

Nonetheless, we acknowledge that legal reform takes time and the political will for change. The enactment of hate crime legislation in some jurisdictions may well precede the decriminalisation of same-sex intimacy and nonconforming gender identities. Goodall and Walters (HDT, 2019a: 17) note that “positive changes in national law to encompass LGBT rights have come about not through adopting the pathways that proved most successful in the developed West/Global North but through adapting existing national law.” As such, we do not recommend the imposition of a Western framework of legislation on all Commonwealth countries. Instead, our linked report offers insights into the different models and methods of enacting hate crime laws that have been used throughout the Commonwealth and that may assist other jurisdictions in taking steps towards protecting LGBT people from targeted violence. In this sense, the enactment of such laws may help to facilitate an incremental movement towards future decriminalisation of same-sex intimacy and nonconforming gender identities.

## Identifying other measures to tackle anti-LGBT hate crime

It is outside the scope of this report to recommend all best practices that have been shown to be effective in tackling anti-LGBT hate crime. However, it is worth highlighting some innovative measures that have been evidenced as showing promise in combating the causes and consequences of hate crime. One such measure is restorative justice (RJ) (Walters, 2014). RJ focuses on bringing together stakeholders of a hate-based conflict in order to explore how the harms caused can be repaired, and how those who have done harm can better understand the consequences of their actions. Research in England and Wales has shown that restorative practices that are implemented carefully by trained facilitators, and with adequate preparation, can help to reduce the harms of hate crime, including reducing levels of anger and anxiety, and the fear that an incident will be repeated. Most cases involving repeat victimisation were also observed to cease after the RJ process was implemented.

Educational interventions have also been used in schools and colleges to help reduce prejudice and to enhance understanding about LGBT people. The research in this area is varied, and some studies have actually shown that education programmes can exacerbate the problem (Walters et al., 2016: 38). One study of a programme aimed at preventing homophobic, biphobic and transphobic hostilities in schools in England suggested that programmes are more successful where they take a ‘whole school’ approach. This involves moving beyond single or multiple teaching sessions aimed specifically at learning about LGBT people and instead streamlining LGBT people into teaching sessions and materials throughout a curriculum in age-appropriate ways (Mitchell et al., 2014).

We recommend that states seek to utilise such measures developed locally or internationally, but only where there is *evidence* that they can help to reduce anti-LGBT hostility, and/or support victims.<sup>39</sup>

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<sup>37</sup> See Walters et al. (2016) for a review of empirical evidence on interventions that have been used to tackle hate crime.

<sup>38</sup> See, for example, Facing Facts: <https://www.facingfacts.eu>.

<sup>39</sup> Some of these can be found via the International Network for Hate Studies webpage via the anti-Hate Initiatives tab: <https://internationalhatestudies.com/promising-practices/>.



# Conclusion

LGBT people in many Commonwealth countries continue to live with the daily reality and fear of hate-motivated abuse. The materials reviewed for this report show alarming rates of violence against LGBT people. Because many victims of hate crimes in the Commonwealth cannot safely report violence and access justice when they are victim of attacks, the magnitude of the problem cannot be accurately quantified. The reluctance of many LGBT people to report violence and other hate-based crimes to the authorities means that in many jurisdictions the problem remains hidden. There is, unfortunately, good reason for many victims not to report their experiences of victimisation, because this risks outing them to the police and their communities, typically resulting in ostracisation, isolation, and worse physical and sexual violence.

The extent and nature of hate crime varies across the Commonwealth. Each country has distinct history, socio-political structure, religious institutions and cultural norms. Yet there are also commonalities across Commonwealth countries that have affected both the proliferation and violent nature of much anti-LGBT hate crime. Laws enacted under old British colonial rule that are based on antiquated notions of 'decency' continue to have an oppressive impact on LGBT communities throughout many Commonwealth countries (HDT, 2016b). Even those in jurisdictions that have reformed these laws have noted the legacy effects that such laws still have on contemporary institutional biases, and on the interpersonal hate crimes that continue to pervade communities (AHRC, 2015). Indeed, as this report has illustrated, regardless of the region, targeted violence against LGBT people remains endemic, even where there are legislative frameworks that protect LGBT rights.

The interviews conducted for this report and the literature that was reviewed have provided cogent evidence that shows that both the level and degree of violence directed against LGBT people is greater in particular regions of the Commonwealth. While examples of brutal acts of hatred can be found in countries such as Australia, Canada, New Zealand and the UK, the use of so-called 'corrective rape' against lesbian women, 'mob attacks' and torture of gay men and trans women in public spaces, and the familial abuse of all LGBT people appear to be more commonplace in countries that criminalise same-sex intimacy and nonconforming gender identities.

There is no one type of perpetrator of anti-LGBT hate crime. However, data does suggest that, as with most other types of crime, most anti-LGBT incidents are committed by men. Some data suggest that almost all anti-trans hate crimes are committed by men. Academics have asserted that the number of male offenders involved in this type of hate crime is linked to what is labelled 'hegemonic masculinity' – in essence, the perceived need for men to display their dominance in society, often through acts of violence. These displays of violence are committed both inside and outside the home, and by both state and non-state actors alike. In the Global South, in particular, many hate crimes occur within the home, with both family members and friends taking part in the violent oppression of LGBT people. Anti-LGBT hate crime can also become a group activity, with mob attacks common in many Commonwealth countries in the Global South.

There is clearly much work to be done in challenging anti-LGBT animus and supporting the needs of LGBT communities throughout the Commonwealth. Within this report, we have highlighted how media and social media can, often unintentionally, spread fear and terror within LGBT communities about targeted violence. The way in which hate crimes are reported and information disseminated can be highly sensitive. Iganski and Klikunou (2020) illustrate how journalists and other people disseminating information about anti-LGBT hatred can avoid adding to the “collateral damage through thoughtful reporting”. This includes avoiding overly sensationalised and dramatic language in headlines, and the use of pictures with insulting language or extremist symbols. Reporters should also minimise the focus on perpetrators, and avoid magnifying impacts by referring to reports of alarm and terror amongst community members. Iganski and Klikunou (2020) note that reports should, where possible, include reassuring comments from the police and prosecutors, and direct readers to additional supportive resources.

Legislative reform supports all avenues of work aimed at combating anti-LGBT hostility.

Such reform includes the enactment of hate crime laws, and the decriminalisation of same-sex intimacy and certain gender identities. More work is also needed to ensure that state agencies have the capacity and knowledge to enforce and apply laws aimed at protecting people from targeted abuse. Knowledge sharing across jurisdictions, and domestically across agencies, is key to building capacity, and to ensuring that laws and policies are effectively applied. Civil society organisations and NGOs will be essential to driving forward new and innovative practices in this regard. However, only where new laws are created, and old laws abolished, can these organisations and state agencies begin to collectively increase the safety and security of LGBT people.

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